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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report of the Independent Expert, Mr. Pedro Nikken, on developments in the human rights situation in El Salvador, prepared pursuant to Commission on Human Rights resolution 1994/62

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INTRODUCTION

1. The Commission on Human Rights has been considering the human rights situation in El Salvador since its thirty-seventh session in 1981. In resolution 32 (XXXVIII) of 11 March 1981, it requested its Chairman to appoint a special representative of the Commission with a mandate to investigate the reports about all kinds of grave violations of human rights in El Salvador and to make appropriate recommendations. Mr. José Antonio Pastor Ridruejo (Spain) was appointed the Commission's Special Representative, and he submitted an annual report to the Commission from 1982 up until 1992, in addition to his annual reports to the General Assembly.

2. On 3 March 1992 the Commission adopted resolution 1992/62, in which it extended its thanks to the Special Representative for his final report and requested the Secretary-General to appoint an independent expert to discharge a new mandate, which consisted initially in providing assistance in human rights matters to the Government of El Salvador, considering the human rights situation in that country and the effects of the Peace Agreements on the effective enjoyment of human rights, and investigating the manner in which both parties applied the recommendations contained in the final report of the Special Representative and those made by the United Nations Observer Mission in El Salvador (ONUSAL) and the commissions established during the negotiating process. He was instructed to report to the General Assembly and the Commission on Human Rights. The Secretary-General appointed Mr. Pedro Nikken (Venezuela) as Independent Expert.

3. The Independent Expert submitted his first report to the General Assembly at its forty-seventh session (A/47/596, annex). On 18 December 1992, the General Assembly adopted resolution 47/140, in which it endorsed all the recommendations made by the Independent Expert in his report. Likewise, the Independent Expert submitted a report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/11), and on 10 March 1993 the Commission adopted resolution 1993/93, in which it endorsed all the recommendations made by the Independent Expert and decided to request the Secretary-General to extend for one year the mandate of the Independent Expert to report on human rights developments in El Salvador, providing the assistance required by the Government in this field.

4. The Independent Expert submitted a further report to the Commission (E/CN.4/1994/11) at its fiftieth session, and on 4 March 1994 the Commission adopted resolution 1994/62, in which it decided to extend the mandate of the Independent Expert for one year, for the purpose of providing advisory services to El Salvador and reporting on developments in human rights in El Salvador to the Commission at its fifty-first session under the agenda item "Advisory services in the field of human rights", and requested the Secretary-General to provide the Government of El Salvador with any advisory services it might request, through the Centre for Human Rights.

5. Pursuant to the Commission's mandate, the Independent Expert visited the country twice, from 4 to 10 September and from 27 to 30 November 1994, and made two visits for consultations in Geneva and New York from 10 to 16 July and from 8 to 10 August 1994 respectively.

6. During his visits to El Salvador, the Independent Expert held consultations with the President of the Republic, the President of the Legislative Assembly, the President of the Supreme Court of Justice, the Minister for Foreign Affairs and other high-level government officials, and also the head of ONUSAL and Special Representative of the Secretary-General, and the Director of the ONUSAL Human Rights Division, Mr. Reed Brody, pursuant to his mandate to provide advisory services to El Salvador. He also heard various proposals by non-governmental human rights organizations, with which he met, as he had been accustomed to do on previous missions, under the auspices of the Legal Support Office of the Archdiocese.

7. During his first visit to El Salvador, the Government, through the Ministry of Foreign Affairs, handed to the Independent Expert a document entitled "Proposal by the Government of El Salvador, advisory services in the field of human rights, submitted to the Independent Expert for El Salvador, Mr. Pedro Nikken, September 1994" outlining the technical assistance needs of the various national human rights institutions.

8. With the assistance of the Independent Expert, the Centre for Human Rights prepared a framework programme on technical cooperation and advisory services in the field of human rights, which the Expert submitted to the Government of El Salvador during his second visit to the country from 27 to 30 November 1994. The proposal of the Government of El Salvador served as the primary basis for that programme. Account was also taken of: the Independent Expert's recommendations as contained in his previous reports; consultations with, and periodic reports of, the ONUSAL Human Rights Division; the Independent Expert's consultations with the United Nations High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights and senior officials in the United Nations Centre for Human Rights; and the consultations he held during his mission to El Salvador from 4 to 10 September 1994.

9. Since 16 September 1991, the Director of the ONUSAL Human Rights Division has submitted 12 reports on the human rights situation in El Salvador. The specific mandate of the ONUSAL Human Rights Division is to verify compliance with the Agreement on Human Rights signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) in San José, Costa Rica, on 26 July 1990. 1/

10. In his report to the Security Council on ONUSAL (S/1994/1000) dated 26 August 1994, the Secretary-General gave a detailed account of the current state of implementation of outstanding commitments under the Peace Agreements. He pointed out that the last phase of the Mission would emphasize institution-strengthening and stated that some of the experts currently with ONUSAL might be retained after the closing of the Mission in the framework of a broad programme of technical assistance to the relevant national institutions (para. 54).

11. The political will of the Government and the FMLN fully to comply with the Peace Agreements was recently expressed in the Joint Declaration made by both parties on 4 October 1994 (S/1994/1144, annex), in which they resolved to "cooperate closely and actively to ensure full compliance with all the Peace Accords, both those pending and those being carried out, by no later than 30 April 1995".

12. On 31 October 1994, pursuant to paragraph 14 of Security Council resolution 920 (1994), the Secretary-General submitted a report (S/1994/1212) on ONUSAL, including on the fulfilment and completion of its mandate and on modalities for its progressive withdrawal. In the report, the Secretary-General made an overall assessment of the process in its political, institutional and socio-economic dimensions, and evaluated the effort required to build a solid basis that would ensure, as far as possible, its irreversibility. In this respect, the agreements on the establishment, reform or strengthening of the institutions responsible for protecting and monitoring human rights, as the withdrawal of ONUSAL draws near, are commitments which must be honoured urgently. The Secretary-General indicated that the delay in implementation of some outstanding commitments had been partly due to lack of organization and expertise, but also, in some cases, to lack of financing. Likewise, in view of the political will of the parties and the commitment by the United Nations to the Salvadorian people as regards verification of compliance with the Peace Agreements, in the same report the Secretary-General recommended to the Security Council the extension of ONUSAL until 30 April 1995, by which date that part of its functions which required military and police personnel will have been completed. In addition, to contribute to long-term political and social stability in El Salvador, he informed the Security Council that, before the Mission's termination, he would present it with his thoughts on mechanisms for the United Nations to provide technical assistance in the fields of human rights, the Judiciary, the electoral system and reintegration, especially land transfers. He reiterated that "... the termination of ONUSAL should not mark the end of United Nations efforts to consolidate peace in El Salvador" (para. 30).

13. On 23 November 1994, the Security Council adopted resolution 961 (1994), in which, noting the request of the Government of El Salvador and the FMLN for a further extension of the mandate of ONUSAL and concerned at delays in implementing several important elements of the Peace Accords and several recommendations of the Commission on the Truth, it approved the recommendations by the Secretary-General in his report of 31 October 1994 and, in particular, decided to extend the mandate of ONUSAL for one final period until 30 April 1995. It also invited the Secretary-General, in consultation with competent specialized agencies, regional organizations and Member States, to prepare modalities for further assistance to El Salvador, within the framework of the Peace Accords, for the period after 30 April 1995.

14. The Independent Expert has prepared this report in compliance with his mandate, as contained in Commission resolution 1994/62.

I. OVERALL POLITICAL SITUATION

15. The peace process has continued its course. The cessation of hostilities on 1 January 1992 brought to an end the armed confrontation that had afflicted the country during the previous decades, and particularly the civil war of the 1980s. The Independent Expert has already discussed in some detail the chronology and content of the Agreements in his preceding reports (see E/CN.4/1993/11, paras. 23-31). In short, they were the following: (i) the Geneva Agreement of 4 April 1990 established the format and methodology of the negotiations; (ii) the Caracas Agenda of 21 May 1990 scheduled the phases and the topics for the negotiations; (iii) the San José Agreement of 26 July 1990,

which contained specific undertakings in connection with the observance and safeguarding of human rights; (iv) the Mexico Agreements of 27 April 1991, which comprised important constitutional reforms, promptly ratified by the Legislative Assembly, as well as other political agreements, more particularly the establishment of the Commission on the Truth; (v) the New York Agreement of 25 September 1991, which established a new format for speeding up the process and created the National Commission for the Consolidation of Peace (COPAZ) as "a mechanism for the monitoring and the participation of civilian society in the process of changes resulting from the negotiations"; (vi) the New York Act of 31 December 1991, whereby the parties declared that they had reached final agreements bringing to an end the negotiations on all the substantive items under discussion; (vii) the Chapultepec Peace Agreement of 16 January 1992, which formalized the completion of the peace negotiations and was signed by the Negotiating Commission of the Government, the FMLN General Command and the Secretary-General of the United Nations, and was also initialled by President Cristiani. It is a complex lengthy agreement containing nine chapters: I. Armed Forces; II. National Civil Police; III. Judicial system; IV. Electoral system; V. Economic and social questions; VI. Political participation by the FMLN; VII. Cessation of the armed conflict; VIII. United Nations verification; and IX. Implementation timetable.

16. The Peace Agreements achieved in this context were not confined to solving military questions, but built a substantial programme of reforms intended to tackle some of the deep-lying causes of the conflict, to safeguard respect for human rights and to promote the democratization of the country. Steps have been taken to fulfil this complex set of agreements, with difficulty at times but steadily and gradually. For several issues it has been necessary to conclude supplementary agreements, often for the purpose of rearranging the implementation timetable, which for various reasons it has not been possible to adhere to in some respects. In this connection, the serious delay in implementing the agreements on land transfer is especially disturbing. However, the balance-sheet is generally positive and has been producing concrete results, several of which will be mentioned later in this report. As the Secretary-General stated in his report to the Security Council of 26 August 1994, "The conditions necessary to ensure the full and final implementation of the peace accords seem to be in place, although difficulties in carrying out outstanding obligations should not be underestimated." (S/1994/1000, para. 58.)

17. On 20 March 1994, the first general election since the end of the armed conflict was held. The preparatory process of updating electoral registers encountered some difficulties, which, although they caused some uneasiness, did not prevent the results of the election from being universally accepted. The presidential election was won by Mr. Armando Calderón Sol, the candidate of the governing Nationalist Republican Alliance (ARENA) party. In the first round Mr. Calderón Sol won nearly 50 per cent of the votes cast but did not actually achieve that figure, and so it was necessary to hold a second round of voting between the two candidates who had received the most votes, Mr. Calderón and Mr. Rubén Zamora, the candidate of a left-wing coalition headed by the FMLN and Convergencia Democrática. The legislative election was also won by ARENA, which did not, however, gain an absolute majority in the Legislative Assembly. The FMLN emerged as the second strongest group in Parliament, followed by the Christian Democrat Party (PDC) and the National

Conciliation Party (PCN). The pluralist system of popular representation in the Assembly and the fact that several important decisions within its competence are subject to approval by a qualified two-thirds majority is indicative of a favourable atmosphere for negotiations and agreements that will be beneficial for democratic coexistence and institution-strengthening.

18. Particular mention should be made of the strengthening of the FMLN as a political party and its participation in the elections, in which it received a considerable proportion of the vote, becoming a significant group in Parliament and in local government. All this constitutes reliable evidence of the achievement of one of the objectives specifically mentioned in the Geneva Agreement of 4 April 1991, which was "... reintegrating the members of FMLN, within a framework of full legality, into the civil, institutional and political life of the country". It also represents a landmark in the process of attaining other objectives laid down in the Agreement, such as promoting the democratization of the country and reunifying Salvadorian families.

19. The domestic political scene has been characterized by realignments and regroupings of the various party tendencies. The FMLN has been undergoing a serious internal crisis, which became more acute when its votes were divided in the election of officers of the Legislative Assembly. According to announcements by FMLN spokesmen, the party is to be formally divided in early December, when at least one of the five founding groups will separate from it. The PDC has also split, at least as regards its parliamentary representation. ARENA has not experienced a split, but a new movement has emerged which considers itself to be to the right of the Government and has been the Government's strongest critic during the first months of this Administration's term in office. The Independent Expert considers such realignments to be natural and beneficial within the current transition in El Salvador. The country is emerging from a polarized society, where alliances and groupings were a direct result of that polarization and frequently owed more to identification of a common enemy than to a shared policy. The current trend towards a more open and democratic society fosters other factors, linked much more to shared ideas, interests and policies, as unifying forces.

20. The events described above hold great historical significance inasmuch as they are tangible signs that democratic ground rules have come into play; they are an obvious reflection, in several respects, of the will of all Salvadorians to settle their differences within the framework of democratic standards.

21. On 29 April 1994, the Legislative Assembly, in accordance with article 248 of the Constitution, agreed on new reforms to the Constitution; these are now subject to ratification, by a two-thirds vote of the elected deputies, by the Legislative Assembly that took office on 1 May. The preliminary draft reforms originally prepared by the Ministry of Justice contained a number of proposals in conformity with recommendations made by various bodies involved in the peace process. Unfortunately, many of them were ultimately rejected, and in some cases it is doubtful whether the reforms adopted represented tangible progress.

22. Although the institutional progress made is tangible, the overall picture raises a number of questions about the immediate future. The above-mentioned

political realignments represent a response to a dynamic whose end result is still uncertain. ONUSAL, which has been vigorous in its verification of compliance with the Peace Agreements, especially with regard to due observance and guarantees of human rights, is coming to the end of its mandate. The national institutions which would appear to be ONUSAL's natural successors in performing the functions it has undertaken since the cessation of the armed conflict do not seem to be sufficiently mature for all aspects of that task. Consequently, in various sectors of society, including those which realize the extent of the progress achieved, concern and uncertainty also exist about the momentum of the political process once ONUSAL has terminated its activities in El Salvador. At the same time, the active presence of the United Nations has been both a confidence-builder for those who might feel threatened by reintegration into civilian life after having taken sides during the armed conflict, and a deterrent to opponents of the peace process who would be prepared to perpetrate rash acts in order to sabotage it. In that context, it is only natural that the termination of ONUSAL should be a source of concern.

II. CONSIDERATION OF DEVELOPMENTS IN THE HUMAN RIGHTS SITUATION

A. General consideration of the subject

23. As stated in the Independent Expert's most recent report to the Commission on Human Rights, human rignts have had a place in the antechamber of war and of peace in El Salvador's recent history. Even though very grave violations of human dignity were committed at the beginning and during the armed conflict, one of the most solid and durable foundation stones of the negotiated settlement of that conflict has been the commitment to put an end to those violations and to build the institutions of a modern democracy which would serve to promote, protect and guarantee human rights. In the Peace Agreements as a whole, ways and means of various kinds are established to ensure effective observance of human rights and to provide the State with suitable tools to fulfil effectively its duties to the population and to the international community in this area. The implementation of these Agreements should have a favourable impact on the effective enjoyment of human rights. In his earlier reports to the General Assembly and to the Commission, the Independent Expert discussed in detail the substance and scope of the Agreements and would refer to them in matters relating to general consideration of the subject.

24. Chapter III of this report reviews the progress made by various national institutions concerned with the realization and protection of human rights in El Salvador. These institutions have already begun to play their proper roles. As the ONUSAL Human Rights Division states in its twelfth report, "Although this process is incomplete, it is advancing in the right direction." The Independent Expert is confident that the relationship of cooperation upon which El Salvador and the Centre for Human Rights have embarked and which constitutes the framework of his mandate will help to speed up and further consolidate this progress.

25. Against a general background of positive developments in the human rights situation in El Salvador, various manifestations of violence in society have not been eradicated. While in many cases such acts are committed by common

criminals, they have sometimes taken the form or appearance of selective social or political violence. There are no grounds for concluding that the public authorities participate or act as accessories in these incidents, but this does not rule out the intervention of individual State officials. What does give cause for concern, however, is the failure of efforts made, in the great majority of cases, to identify the culprits and bring the statutory penalties to bear on them. In this connection, the results of the work of the so-called "Joint Group", which are mentioned below (see paras. 33-37), are noteworthy.

26. Pending implementation are a number of recommendations, including various legislative reforms, made by the ONUSAL Human Rights Division, the Commission on the Truth and the Independent Expert himself. The latter also hopes that the relationship of cooperation begun between El Salvador and the Centre for Human Rights will facilitate the implementation of those recommendations through appropriate mechanisms.

27. Also pending is accession to or ratification of a number of international human rights instruments, including the Optional Protocol to the International Covenant on Civil and Political Rights, and the Additional Protocol to the Inter-American Convention on Human Rights in the area of economic, social and cultural rights ("Protocol of San Salvador"). Furthermore, the jurisdiction of the Inter-American Court of Human Rights has not been accepted.

28. The Independent Expert has received complaints from non-governmental organizations about continuing cases of human rights violations in El Salvador. Most of them are known to ONUSAL, for which reason this report will, in general terms, confine itself to the reports transmitted to the Secretary-General by the Director of the ONUSAL Human Rights Division. The conclusions in those reports are summed up below, particular attention being paid to the fact that the Independent Expert is required to discharge his mandate "in close cooperation" with the Division.

B. Right to life

29. In his eleventh report, the Director of the ONUSAL Human Rights Division said that the number of complaints received during that period about violations of the right to life had declined in relation to previous periods and stressed that the electoral period might have been responsible for the increase in politically-motivated violations or complaints. With respect to death threats, the report stated that, even though such threats had actually led to physical attempts on the life of the victim in only a few cases, they were nevertheless acts which clearly demonstrated that recourse to politically-motivated violence was still a reality in El Salvador and that it constituted a serious obstacle to the consolidation of the democratic political system outlined in the Peace Agreements (eleventh report of the ONUSAL Human Rights Division, 1 March to 30 June 1994).

30. In his twelfth report, the Director of the ONUSAL Human Rights Division noted a gradual decrease in the number of complaints and stated that no politically-motivated violations of the right to life had been recorded during the previous few months (twelfth report of the Director of the ONUSAL Human Rights Division, July to September 1994).

31. As mentioned before, non-governmental organizations reported to the Independent Expert numerous cases of attempts against the lives of persons which could be traced directly or indirectly to the State apparatus. The Independent Experts is concerned that, in several such cases, the perpetrators were members of the National Civil Police. In its twelfth report, the ONUSAL Human Rights Division noted eight reports of arbitrary executions attributed to the PNC (three of which had been fully substantiated, while five are still being investigated) and one complaint of death threats, which had been fully substantiated. The report stated "that the arbitrary executions mentioned here do not reflect a deliberate response on the part of the officers involved and still less a systematic policy of police activity. It has been found that such cases entail a disproportionate use of firearms on the part of police officers and a tendency to obstruct subsequent investigations". These incidents certainly give cause for concern and require early corrective action by the senior officials responsible for public security.

32. During his second visit to the country, the Independent Expert received several reports concerning the assassination of Mr. David Faustino Merino, a FMLN/FPL leader, member of the Central Committee of the FPL and the official in charge of matters relating to land transfers in the department of Usulután. Some reports indicate that the act was carried out by illegal armed groups. Both the Deputy Minister for Public Security and the Director of the ONUSAL Human Rights Division informed the Independent Expert that investigations were under way and that various hypotheses were being considered.

33. As indicated in the previous report (E/CN.4/1994/11, para. 57), on 8 December 1993, the Joint Group for the Investigation of Illegal Armed Groups was officially set up, further to an initiative by the Secretary-General, with the support of the Security Council. The Joint Group submitted its report on 28 July 1994.

34. Even though the Joint Group stated that it was unable to present any "categorical conclusions", it did gather "sufficient evidence pointing beyond a reasonable doubt to the action of groups and persons who continue at present to choose the path of violence for achieving political results". It also concluded that the so-called "death squads", with the characteristics they had in the 1980s, represented a phenomenon different from the politically-motivated violence existing at present in El Salvador. In that regard, the investigation concluded "that the phenomenon of political violence has at present its own characteristics, which can be identified, notwithstanding all the complexity of the subject ... there exist solid grounds for asserting that the broad network of organized crime that flails the country, in which, the evidence shows, there is active participation of members of the armed forces of El Salvador and the National Police, cannot be divorced from many acts of politically-motivated violence ... What is apparently taking place is a shift toward more decentralized structures geared primarily to common crime and exhibiting a high degree of organization. Nevertheless, those same structures no doubt maintain intact their ability to assume, when circumstances require, the role of perpetrators of politically-motivated criminal acts". To this may be added another phenomenon, namely, "the fragmentation of earlier structures. Locally, one can see signs of the action of groups that pursue political objectives, using violent means for that purpose. Such groups tend to be closely connected with

acts of common crime and are characterized by a high degree of organization, logistics and the support, in certain cases, of State agents". In that connection, the Joint Group also concluded that, despite the great strides made by Salvadorian society to achieve full "national reconciliation, there still exist data that support the well-founded suspicion that recourse to violence in order to solve political differences has not yet been definitively eradicated".

35. The Joint Group made a number of recommendations, including, in particular, the creation, within the PNC Criminal Investigation Division, of a special unit for dealing with the phenomenon in question. The composition of this special unit would have to be such that it could ensure "much needed confidence among the various social and political sectors, in addition to technical efficiency in the performance of its investigatory functions". In this regard, the Independent Expert wishes to point out that, in order to generate that confidence, it will be essential to overcome the problems affecting the PNC Criminal Investigation Division which have been noted in his earlier reports and are also mentioned in the current report (see paras. 42, 75 and 76 below).

36. With regard to the functioning of the judicial system, the Group reiterated the need to "cleanse" the Judiciary and to adopt, "within a framework of respect for due process of law and human rights, the necessary legal reforms to provide a special procedure for those cases in which there come to light criminal acts involving either alleged political motives or ties to organized crime". It also suggested "that an appropriate solution would be to appoint, in accordance with the law, designated or special judges to try criminal cases of the type in question".

37. In a confidential annex, the Group submitted to the highest authorities of the State a detailed account of its investigations, including the names of alleged responsible parties and other information that would be of use in fuller investigations by the competent bodies.

C. Enforced or involuntary disappearances

38. In its twelfth report, the ONUSAL Human Rights Division noted that "It is noteworthy that there have been no enforced disappearances in El Salvador for over two years". During the period covered by this report, two complaints of enforced disappearances were made to ONUSAL, which investigated them, established in both cases that there had been no disappearances and identified the whereabouts of the alleged victims.

D. Torture and other cruel, inhuman or degrading treatment or punishment

39. In its twelfth report, the ONUSAL Human Rights Division noted that during the period covered by the report, ONUSAL received two complaints of torture by members of the National Civil Police. One case is reported to have been substantiated, while investigations into the other are still continuing.

40. ONUSAL also noted in that report that accusations of ill-treatment had fallen slightly during 1994 and pointed out that in many cases of ill-treatment, the victims were also found to have been arbitrarily detained.

E. Arbitrary detention

41. In its twelfth report, the ONUSAL Human Rights Division noted that the number of arbitrary detentions recorded represented a percentage increase over the period covered by its previous report (twelfth report on the ONUSAL Human Rights Division, March to June 1994).

F. Administration of justice and right to due process

42. The Independent Expert received complaints about the slow investigation of homicides by the PNC Criminal Investigation Division and its routine use of "confidential sources", which appeared to be an attempt to sidetrack the investigations and to prevent identification of those who were actually involved in the cases and were often involved in other criminal activities.

43. The prison system, whose deficiencies are of long standing, was hit by a serious crisis during the period covered by this report. Overcrowding, which was largely the result of delays in the administration of justice, health conditions, food and, in general, the administrative regime in prisons have created a breeding-ground for various acts of violence, which led to successive riots that took a tragic toll. The authorities have expressed their concern at this situation and have stated their willingness to adopt corrective measures with the urgency which the situation warrants. This is an appropriate field for assistance and cooperation, which could be administered through the Centre for Human Rights.

G. Political rights

44. As already mentioned, general elections were held on 20 March 1994 (see para. 17 above). Favourable conditions have also been created for the implementation of the necessary reforms of the electoral system (see para. 80 below).

H. Economic, social and cultural rights

45. According to information received, there was continued failure to protect economic and social rights during the period covered by this report. Despite the increase in the minimum wage, this was not sufficient to meet the basic needs of the population. Numerous labour disputes broke out as a result of workers' complaints about low wage levels, the threatened loss of jobs due to the policy of privatization of State enterprises, and the dismissal of trade union leaders.

46. The Independent Expert also received complaints about violations of labour and trade-union rights, particularly in the assembly firms which operate in El Salvador. Complaints were also received about ill-treatment, dismissals and even threats against persons endeavouring to establish trade unions.

47. With regard to the implementation of the agreements concerning land transfer, and because of the direct relationship between this question and the causes of the armed conflict which afflicted the country, execution of the programme has been subject to considerable delays, not only because of the

lack of resources, but also because of the slow pace of bureaucratic procedures and other complications. Solutions must be found to this problem.

48. The Legal Support Office of the Archdiocese of El Salvador submitted a complaint that on 26 September 1994 approximately 1,000 demobilized servicemen, demobilized members of the civil defence force and cantonal patrols, and members of the Association of Demobilized Members of the Armed Forces of El Salvador (ADEFAES) occupied the Legislative Assembly building and took 29 deputies and officials hostage as a guarantee that they would be allowed to negotiate their economic and social demands, including demands for economic incentives for members of the civil defence force and patrols, such as payment of an indemnity, land adjudication and participation in reintegration programmes.

49. The Independent Expert also received information about a non-governmental organization, the "Centre for the Defence of the Consumer", which has been making a very valuable contribution to efforts to protect consumers' rights. Since 8 September 1992, the country has had a Consumer Protection Act, which is based on the consumer protection guidelines approved by the United Nations in 1985.

I. Situation of children

50. El Salvador ratified the Convention on the Rights of the Child on 10 June 1990. In his latest report to the Commission (E/CN.4/1994/11, paras. 87-89), the Independent Expert stated that the Committee on the Rights of the Child had considered the initial report of El Salvador (CRC/C/15/Add.9) at meetings held on 27 and 28 September 1993. The Committee noted that budget restrictions affecting social programmes had been detrimental to the protection of the rights of children, and drew attention to the lack of coordination between public and private bodies and organizations dealing with the rights of the child. The Committee on the Rights of the Child recommended that urgent measures should be adopted for the protection of children belonging to vulnerable groups, in particular displaced and refugee children, disabled and homeless children, as well as children subject to abuse or violence within the family.

51. The Expert received information that the 1994 budget allocation to the Salvadorian Institute for the Protection of Minors had been significantly increased but, given the magnitude of child health problems in El Salvador, the Institute would still have serious problems in meeting its needs.

52. Within the Office of the National Counsel for the Defence of Human Rights, an Assistant Counsel for the Defence of the Rights of the Child has the specific task of protecting the interests of children in any action taken by public or private authorities and ensuring effective compliance with the applicable laws. In its report for the period 15 June 1993 to 15 May 1994, the Office of the National Counsel for the Defence of Human Rights stated that its work still required improvement with respect to procedures for receiving and investigating complaints, which should be such as to draw attention to widespread wrongful practices involving violation of the rights of children.

53. The Independent Expert also received information on the valuable work which the Pro-Búsqueda de los Niños Association is carrying out in Chalatenango, with the support of the Chalatenango Human Rights Group. This Association has for some time now been engaged in searching for children who disappeared during the war years. From November 1992 to October 1994, the number of cases submitted for investigation is reported to have been 78 and, thanks to the Association's searches, 13 children have been located to date. However, the Independent Expert received a complaint from the above-mentioned Group about the lack or absence of cooperation from various State institutions as it pursued its objective of locating children who had disappeared. This is a task which deserves the support of the society.

J. Situation of women

54. El Salvador ratified the Convention on the Elimination of All Forms of Discrimination against Women on 19 August 1981, but is still not party to other relevant treaties, such as the Convention on the Political Rights of Women and the Convention on the Nationality of Married Women.

55. Within the Office of the National Counsel for the Defence of Human Rights, the post of Assistant Counsel for the Defence of the Rights of Women has been established. In her report for the period June 1993 to July 1994, the Assistant Counsel stated that, since the situation of women had not changed in any substantial way, there was likely to be a growing trend towards continued and more frequent violations of their rights. She also reported that, during the year covered by her report, complaints of sexual abuse had increased and intra-family violence was becoming more and more frequent, with the law and the court system providing little real protection for women. She added that the State should assume responsibility for the social and legal protection of women and give effect to the Convention on the Elimination of All Forms of Discrimination against Women, which El Salvador had acceded to and ratified. She further stated that none of the main organs of the State had fully and systematically implemented the Convention, which meant that the State was guilty of violation of the human rights of women by omission.

56. On 25 November 1994, the National Counsel for the Defence of Human Rights submitted to the Legislative Assembly a Prevention of Family Violence Bill, whose aim was to prevent, control and eliminate violence in family relations, to provide assistance to victims and to impose preventive, precautionary or protective measures on offenders. The Bill was the result of the coordinated efforts of the National Counsel for the Defence of Human Rights and various non-governmental organizations engaged in the protection and promotion of women's rights.

III. INSTITUTIONAL DEVELOPMENTS

57. As has been emphasized in previous reports submitted by the Independent Expert, in the Peace Agreements as a whole, ways and means of various kinds are established to ensure effective observance of human rights and to provide the State with suitable tools to fulfil effectively its duty towards the population and towards the international community to respect and safeguard those rights. The Agreements envisage the establishment or strengthening of lasting machinery to perform this task, such as the Office of the National

Counsel for the Defence of Human Rights, the National Civil Police and the judicial system. In earlier reports to the General Assembly and the Commission, the Independent Expert discussed in some detail the substance and scope of these Agreements and would refer to them in matters relating to general consideration of the subject. The comments which follow try to sum up, within the limits imposed by the length of this report, some of the main aspects of the most recent developments in the institutional process relating to the above-mentioned bodies.

A. Office of the National Counsel for the Defence of Human Rights

58. In his preceding reports, the Independent Expert stressed the need to strengthen the capacity for action and credibility of the Office of the National Counsel for the Defence of Human Rights. This body has enough constitutional and legal powers to be able to carry out effective work on the promotion and protection of human rights.

59. The Office of the National Counsel made its presence more strongly felt in 1994 than in preceding years. It published reports on cases brought to its attention and demonstrated independence from the Government. Its national coverage has increased considerably. Nevertheless, as the Counsel told the Independent Expert, its activity has been curtailed by the shortage of material resources, notably adequate transport in rural areas. The Counsel also complained about the lack of administrative and financial autonomy of his Office. For its part, in its twelfth report, the Human Rights Division of ONUSAL stressed the need for the Office of the National Counsel, as a national institution with major powers and responsibilities with regard to the protection and promotion of human rights, "to pursue its institutional strengthening more vigorously".

60. The Independent Expert expressed to the Counsel his concern at the perception of the Office by bodies and individuals involved in the promotion and defence of human rights. At a time when the end of the mandate of ONUSAL, including its Human Rights Division, is already in sight, the Office has a very important role to play in filling the gap left by international verification of due observance and guarantees of human rights. That role does not end with the efficient investigation of cases but, as has already been stated about ONUSAL, comprises the building of confidence in persons who, for various reasons relating to the now ended armed conflict, may feel threatened, and serving as a deterrent to any persons attempting to commit further violations of human rights under cover of impunity. These psychological effects do not appear to be fully appreciated by civil society, as the Independent Expert told the Counsel during his visit to El Salvador in September 1994.

61. The Counsel stated that, to a certain extent, he shared some of the concern expressed by the Independent Expert and that his Office, in conjunction with UNDP, had drawn up a special programme known as the "Reform and strengthening of the Office's system for the protection of human rights". The programme includes twice-yearly execution of a project entitled "Strengthening of the Office's observation, monitoring, analysis and investigation techniques" (the current period covered runs from 1 September 1994 to 28 February 1995). During his most recent visit to

El Salvador in November 1994, the Independent Expert was told by the Counsel that that programme was up and running, albeit with some delays in certain areas.

62. There is, however, still a long way to go as regards confidence-building, which is essential if the Office is to grow in strength and be capable of performing its constitutional mission. Again this year, despite the fact that the Office's activity has obviously expanded and become more widely known, it has been severely criticized by non-governmental organizations. Regardless of what their motivation may be, this fact implies that there is a tragic gap between the Office and these organizations, whose active cooperation is practically indispensable if it is to carry out its task effectively.

B. Judicial system

63. The judicial system in El Salvador has been the subject of repeated comment in earlier reports. Prominent among features singled out for unfavourable comment were the vertical structure of the judicial apparatus, its lack of autonomy and independence, its inefficiency and the relatively unambitious scope of the judicial reforms included in the Peace Agreements. Nevertheless, in 1994 the judicial system underwent important changes, in the course of which the mechanisms designed in the peace process operated satisfactorily and expectations of more far-reaching judicial reform grew considerably. A brief description of certain significant developments is given below.

64. The constitutional reform originating from the Mexico City Agreements amended the method of election of judges to the Supreme Court of Justice. Competence for this procedure is conferred on the Legislative Assembly, but appointment requires a qualified two-thirds majority, unlike the absolute majority provided for under the previous system. The judges' term of office is now nine years, which gives them greater independence from a Legislative Assembly whose mandate is for only three years. In addition, not all the judges are elected at the same time; one third of them are replaced every three years. This averts a situation where membership of the Supreme Court is conditional upon the political balance existing in the Legislative Assembly at a given point in time. Lastly, it was further stipulated that the election would take place on the basis of a list of candidates drawn up by the National Council of the Judiciary, half of the candidates being nominated by bodies representing Salvadorian lawyers after a vote by all those lawyers; the list is also required to reflect the most significant trends in legal thinking. This reduces the discretionary political power of the Assembly to select judges and introduces external controls into the election.

65. Among the subjects which it was not felt necessary to include within the constitutional reform under the Peace Agreements, but which were referred for secondary legislation, was the structure of the National Council of the Judiciary, the organ responsible for drawing up the lists of candidates for membership of the Supreme Court and for submitting to this Court the three-person lists of candidates for judicial posts in the various bodies. A definition was, however, laid down on a question of principle, namely that the law should ensure that the composition of the Council "shall be such as to guarantee its independence from the organs of the State and from political

parties, and its membership shall include not only judges but also sectors of society not directly connected with the administration of justice" (Mexico Agreements: Political agreements for the development of the constitutional reform, A.b.1). This was nevertheless one of the few cases in which the constitutional reform ultimately approved by the Legislative Assembly departed from the Mexico Agreements. Under article 187 of the amended Constitution, "the members of the National Council of the Judiciary shall be elected by the Legislative Assembly by the qualified vote of two thirds of the elected deputies". This provision ran completely counter to what had been agreed during the negotiations in Mexico, since it did not ensure the independence of the Council from the organs of the State and the political parties, but could bring about precisely the opposite. In fact, if this constitutional provision had been directly implemented, without legislative restrictions having previously been set on its scope, it would have been possible for two or more political forces representing the requisite qualified majority in the Assembly to share the seats on the Council, with the result that the "party-oriented" character of justice would have been accentuated. Given the functions assigned to the Council under the constitutional reform, such a situation would have had a devastating effect on judicial reform as a whole. The new constitutional reform agreed on 29 April 1994 (see para. 16 above) did not amend this point, although it added that dismissal of members of the Council is also within the competence of the Legislative Assembly, with the same qualified majority. This latter amendment, whose final ratification would abolish the competence to dismiss members of the Council conferred by law on the Supreme Court, fulfils the recommendation made on this point by the Commission on the Truth, 2/ albeit only partially since that recommendation envisaged the establishment of "specific legal grounds" for dismissal. The approved reform also takes account of the observations made by the Independent Expert in his reports to the Commission on Human Rights at its forty-ninth 3/ and fiftieth 4/ sessions.

66. In the resumed peace negotiations this danger was noted. In the Peace Agreements signed at Chapultepec on 16 January 1992, in other words, after the constitutional reform relating to the National Council of the Judiciary had come into effect, the Government and FMLN reaffirmed "that, as already agreed in the Mexico Agreements, the composition of the National Council of the Judiciary shall be such as to guarantee its independence from the organs of the State and from political parties". In the same paragraph they referred the matter to the National Commission for the Consolidation of Peace (COPAZ) 5/ to prepare the corresponding preliminary legislative draft.

67. Against this background, in 1992 the new National Council of the Judiciary Act was approved; it expressly declared the Council to be an independent organ - a concept which is in conformity with the Peace Agreements. As regards membership, the Act limited the powers which the Legislative Assembly would have - if the Constitution was directly applied - freely to elect the members of the Council, since it may only choose from among candidates proposed on lists of different origins: two lawyers chosen from two three-person lists compiled by the Supreme Court; one second-instance and one first-instance appeal-court judge, chosen from among the six most senior judges at these levels; three lawyers elected by direct, equal and secret ballot by all Salvadorian lawyers; one lecturer in law nominated by the University of El Salvador; two lecturers in law nominated by the private

universities; and one member of the Public Prosecutor's Office chosen from among the persons nominated by the Attorney-General, the Procurator-General and the National Counsel for the Defence of Human Rights. The National Council of the Judiciary was elected by consensus, in accordance with the above-mentioned procedure, and has been performing its duties since June 1993.

68. When the time came for the election of the new judicial authorities, the initial impact of the reforms exceeded early expectations. The country's leaders appear to have realized the decisive importance of an independent and vigorous system of justice within a democratic society. Special attention must be focused on the choice of the new Supreme Court of Justice, the first to be elected in accordance with the system established in the Peace Agreements, in which the National Council of the Judiciary played a decisive part. After several weeks of stagnation and on the basis of the proposals by the National Council, in 1994 all the groups represented in the new Legislative Assembly unanimously elected an independent Supreme Court made up of jurists of recognized respectability and unaffected by political influence. This fact, which was seen as an unattainable objective only a short time ago, has had a positive impact on society as a whole and has opened up new perspectives of credibility in the peace process and created optimism about the real possibilities of strengthening the institutional system for the protection of human rights.

69. The new judicial authorities have announced, among their first judicial policy measures, the comprehensive reform of the system, the purging of judges and the granting of priority to judicial training. They have taken initial steps in this direction. The Independent Expert heard the concern expressed by various sectors about what they considered to be the slowness of the purging process, which, as at the time of drafting this report, has led to the dismissal of three first-instance judges and one second-instance appeal-court judge. When told of this concern, the President of the Supreme Court informed the Independent Expert that the Supreme Court's desire to cleanse the judicial system was incontrovertible, but the process was subject to legal proceedings which were somewhat complicated and caused a certain amount of delay. In order to overcome this obstacle, the Supreme Court has taken the initiative of proposing to the Legislative Assembly simple amendments to the legislation applicable to these proceedings in order to enable them to be carried out more speedily.

70. Under the terms of the constitutional reform deriving from the Mexico Agreements and subsequently approved by the Legislative Assembly, "the Judiciary shall have an annual allotment of not less than 6 per cent of the ordinary revenue of the State"; this percentage also covers the Public Prosecutor's Office. This reform has given rise to a further amendment, now under consideration by the Legislative Assembly, which would reduce this figure to 4 per cent, although the Prosecutor's Office has been guaranteed a "floor" allocation of 2 per cent. Without prejudice to the legitimacy of giving the Prosecutor's Office greater financial autonomy, the Independent Expert cannot refrain from expressing his concern at budgetary limitations that may affect the Judiciary, especially in the present situation, when an independent Supreme Court intends to play a leading role in broad judicial reforms that will have the support of the advisory services of the Centre for Human Rights.

71. In his previous reports to the General Assembly and the Commission on Human Rights, the Independent Expert emphasized the drawbacks of the vertical structure of the Salvadorian judicial system, deriving from the Supreme Court's dual status as the highest court in the land and the administrative head of the Judiciary, which even included the right to issue authorization to practise as a lawyer and to disbar lawyers. This adversely affects the independence of lawyers. Some of the negative consequences of this structure have been rectified, or at least reduced, by the functions which the National Council of the Judiciary has been performing in the procedures for the appointment and dismissal of judges. In addition, the constitutional reform agreed on 29 April 1994 confers competence to suspend or disqualify lawyers and notaries on a new body, the National Council of Lawyers and Notaries. These are appropriate steps to remedy some of the problems outlined earlier.

C. National Civil Police

72. The National Civil Police (PNC) emerged from the peace process and is intended to replace the old public security forces and to be the only armed police force with national jurisdiction. It has been given responsibility for protecting and safeguarding the free exercise of the rights and freedoms of individuals, preventing and combating all types of crime, and maintaining internal peace, tranquillity, order and public security in both urban and rural areas. It was conceived as a new force with a new organization, new officers, new training and education procedures, and a new doctrine. A transitional regime has been set up whereby one of the old security forces, the National Police, will continue to operate until such time as the deployment of the PNC has been completed.

73. The Government of President Calderón Sol has created, within the Ministry of the Interior, the post of Deputy Minister for Public Security, to whom the PNC was made responsible. This post and that of new Director of the PNC were filled after consultations aimed at ensuring the greatest possible degree of consensus on those appointments.

74. In his most recent report to the Commission on Human Rights, the Independent Expert expressed concern at certain problems detected in the PNC and in the application of the transitional regime. One subject of concern was the increase in the number of personnel in the old National Police, despite the fact that the Peace Agreements provide for the gradual down-sizing of this force until it is completely replaced by the PNC. This matter has been resolved, since President Calderón Sol has ordered the date (March 1995) set for the disbandment of the National Police to be brought forward to 31 December 1994. He has also ordered the headquarters of the National Police to be transferred to the PNC; this compares favourably with what happened with other facilities belonging to the other disbanded security forces, which remained on the inventories of the armed forces. 6/

75. The PNC has continued to expand all over the country and its functional divisions are already operational, although their activity has yet to reach optimum levels. The Inspector-General of the PNC has finally been appointed and has the very special responsibility of overseeing police activities. The appointment was the outcome of a process of institutional consultation during

which one of the candidates had to be rejected after failing to secure the approval of the National Counsel for the Defence of Human Rights.

76. The situation that continues to prevail in the Criminal Investigation and Anti-Narcotics Divisions is still causing concern. As the Independent Expert informed the Commission in 1994, 7/ on 22 December 1992 agreement was reached on a gradual transition which would incorporate, subject to evaluation, the staff of the then existing Commission for the Investigation of Criminal Acts and Anti-Narcotics Commission into the Criminal Investigation and Anti-Narcotics Divisions of the PNC. On that occasion he expressed concern because ONUSAL had not received all the information requested in order to verify the evaluation of the candidates and had been unable to verify how such members were being transferred to the PNC. In view of the background and, in particular, the acts and omissions of the so-called Commission for the Investigation of Criminal Acts, which had helped to set the stage for impunity as described in the report of the Commission on the Truth, this situation is rather alarming and revives concern that military influence is being reasserted in the PNC. This concern was repeatedly expressed to the Independent Expert during his visits to El Salvador, especially by the NGOs and opposition sectors. Moreover, in his report of 26 August 1994, the Secretary-General informed the Security Council of the most important irregularities noted in connection with those two Divisions. 8/

77. The Independent Expert expressed that concern to the Deputy Minister for Public Security, who was receptive to his comments. A new head of the Criminal Investigation Division has been appointed and his deputy has been dismissed. The Deputy Minister informed the Independent Expert that, with the discretion and caution required by such a task, it was planned to undertake a thorough assessment of the units in question.

78. Concern has also been caused by the not inconsiderable number of violations of human rights attributable to PNC officers, including attacks on life and personal integrity and improper use of firearms. Although such acts are not part of PNC policy, its senior officials should impose strict disciplinary measures to prevent the PNC from being diverted from its role as a democratic and law-abiding police force.

79. Continuing use has been made of the armed forces, as indicated in the most recent report of the Independent Expert to the Commission on Human Rights, for the purposes of carrying out internal security tasks; according to the Constitution, this can be done only in exceptional circumstances when all other means have failed. In some cases, the increase in ordinary crime - which nobody disputes - has been invoked. However, as stated in that report, "it is not obvious, as the country's history has shown, that military deployment is the best way of halting the wave of violence. In any event, if the Government considers that conditions exist to invoke the constitutional provision which authorizes it in exceptional circumstances to use the army for public security purposes, it must avail itself of that provision expressly by means of a legal act which recites the authority on which it is based and is to be communicated to the Legislative Assembly, as the Constitution requires". The armed forces were also called on to deal with disturbances on the occasion

of a bus drivers' strike in the town of Lolotique, department of San Miguel; as already stated, these disturbances unfortunately resulted in three fatalities.

D. Electoral system

80. On 30 July 1994 the new Supreme Electoral Tribunal was elected. Subsequently, on the initiative of the President of the Republic and as he announced after his election victory, together with his rival candidate in the second round, the Advisory Commission for Electoral Reform, which is pluralist in character, was established with specific responsibility for proposing necessary reforms of the electoral system. A particularly important task is to ensure that the electoral rolls or registers are accurate, entirely reliable and of the highest technical quality, and to issue an appropriate instrument for the identification of electors on a permanent basis. The Commission will also discuss and review, inter alia, proportional representation on municipal councils and voting from one's home. The Commission has the responsibility of making proposals and suggestions, which will be submitted, during the next six months, to the Supreme Electoral Tribunal for review and subsequent approval by the Legislative Assembly. The time is right since the next elections will be held in 1997, which means that, together with the above-mentioned political agreements, work can be done on the subject free from the pressure of immediate electoral interests. All the reforms of the electoral system should enter into force well before the next legislative elections.

IV. CONCLUSIONS

81. An overall assessment reveals positive developments in the human rights situation in El Salvador, where a number of unacceptable past practices, such as enforced disappearance, appear to have been eradicated. However, various manifestations of violence in society have not been eliminated. While in many cases such acts are committed by common criminals, they have sometimes taken the form or appearance of selective social or political violence. There are no grounds for concluding that the public authorities participate or act as accessories in these incidents, but this does not rule out the intervention of individual State officials. What gives rise to the greatest concern is the failure of efforts, in the great majority of cases, to identify the culprits and bring the statutory penalties to bear on them.

82. In this latter respect, the results of the "Joint Group" give cause for disquiet, as it has concluded that there is "sufficient evidence pointing beyond a reasonable doubt to the action of groups and persons who continue at present to choose the path of violence for achieving political results". These groups would appear to be closely linked to ordinary criminal activities, with a high degree of organization, logistics and support, in some cases, from State officials. This is an extremely sensitive matter that requires effective and forceful action by the State.

83. The effects of the termination of the armed conflict on economic, social and cultural rights continue to be insignificant, and the agreements reached on them in the peace process have not yielded the expected fruit. The observed stagnation of action to implement the agreed provisions relating to

land is still a source of frustration and tension in various sectors of society. Appreciable progress in this area in the shortest possible time is a prerequisite for justice and social stability.

84. As the Independent Expert said in his preceding reports, the Peace Agreements are the result of a massive effort by the parties to reach an understanding, an effort that also expressed a profound national aspiration for peace and justice. The form and content of the Agreements are geared not only to ending the armed conflict by political means, but also to the national enterprise of building a new and more democratic society imbued with the spirit of solidarity, in which untrammelled respect for human rights is a fundamental means of State action. The nation is thus offered an extraordinary opportunity for progress.

85. The period covered by the present report has evinced tangible and significant institutional progress of various kinds. Above all else, there has been the unanimous election of an independent Supreme Court of Justice, together with its proclaimed intention to cleanse and reform the judicial system. The work to be done in this area is difficult and some of its results may not be immediately apparent. In other words, although emergency treatment is necessary, it is not sufficient. Judicial training, the construction of an academic centre of excellence to enable the training to take place on a continuous basis, the establishment and modernization of courts and procedure, and the evolution of a judicial culture, within the system and also within society as a whole, are irreplaceable objectives but they cannot be achieved overnight. The building of a new independent, modern and efficient judicial system requires sustained implementation measures which go beyond the initial impact. Only a programme of these dimensions will in the final analysis guarantee the transformation of the system of justice. This is an area open to fruitful international cooperation, with the support of the Centre for Human Rights.

86. Also significant is the holding of the general elections, which, in addition to having served to elect the Head of State with a substantial majority in a process whose legitimate result has not given rise to any objections, have produced a Legislative Assembly with a pluralist membership. In this Assembly the former guerrilla forces achieved significant representation, which underlines their endorsement of the democratic ground rules. The establishment of the Advisory Commission on Electoral Reform creates an undoubted opportunity for introducing reforms to perfect the electoral system, with the participation of all political sectors.

87. Another development that must be regarded as salutary is the proclaimed intention of the President of the Republic to bring forward the date of the permanent demobilization and disbandment of the National Police, the last of the old public security forces operating as such. On the other hand, concern is aroused by the various abnormalities which have been observed in the National Civil Police; they have already been mentioned in this report and appear to show that symptoms of military influence in police matters still exist. The PNC must not deviate from the concept of a democratic, modern police force, integrated within civil society and not ranged against it. In

addition, the action of the armed forces in the area of public security has again in 1994 been inconsistent with the substantive and formal requirements laid down by the Constitution.

88. The Office of the National Counsel for the Defence of Human Rights is called upon to perform a central role in promoting and safeguarding those rights now and in the future. The task of supporting and strengthening the Office must be given priority in terms of both internal action and international cooperation. It is essential that it should improve its relations and work in close contact with the non-governmental organizations.

89. Some of the recommendations of the Commission on the Truth are yet to be implemented. Several entail legislative measures, while others, such as recognition of the binding jurisdiction of the Inter-American Court of Human Rights, are simply conditional upon the Government's acceptance of an optional clause in the Inter-American Convention on Human Rights.

90. Although the institutional progress made is tangible, the overall picture raises a number of questions about the immediate future. In particular, ONUSAL, which has been vigorous in its verification of compliance with the Peace Agreements, especially with regard to due observance and guarantees of human rights, is coming to the end of its mandate. The national institutions which would appear to be ONUSAL's natural successors in performing the functions it has undertaken since the cessation of the armed conflict do not seem to be sufficiently mature for all aspects of that task. Consequently, in various sectors of society, including those which realize the extent of the progress achieved, concern and uncertainty also exist about the momentum of the political process once ONUSAL has terminated its activities in El Salvador.

91. The favourable institutional developments noted during 1994 and the very fact of ONUSAL's departure indicate that the country is mature enough to proceed from an era in which the activity of the international human rights bodies was fundamentally geared to monitoring, verification and supervision, to a new era of technical assistance and cooperation, in which the international community will lend its support to the Salvadorian Government and people with the aim of strengthening their institutions and perfecting the internal means of safeguarding and promoting human rights. This is the role that can be performed by the Centre for Human Rights and the way in which the Independent Expert has interpreted the mandate which, on the initiative of the Commission on Human Rights, he received from the Secretary-General of the United Nations. The recommendations set out below must also be seen in this context.

V. RECOMMENDATIONS

92. The recommendations contained in this report will be of two types. The first type will be those most directly connected with the development of the human rights situation and institutions in El Salvador; the second will relate to the programme of technical cooperation and advisory services of the Centre for Human Rights in that country.

A. General recommendations

93. The recommendations of the Joint Group for the Investigation of Illegal Armed Groups must be implemented as scrupulously as possible. At stake is the complete eradication of practices that have embodied the most complete contempt for human life and dignity and for the respect that a civilized society owes itself. The special unit responsible for these investigations must be made up of carefully selected members so as to command the trust, and possess the human and tecnnical capacities, needed for its sensitive task.

94. The strengthening of, and support for, the Office of the National Counsel for the Defence of Human Rights continue to be immediate and priority goals. In order to achieve them, the material, technical and human resources set aside by the State for carrying out its tasks under the Constitution must be concentrated on the Office of the National Counsel. The Government must cooperate with the Office for this purpose. It is essential that relations between the Office and non-governmental organizations should be improved.

95. It is essential that, within the time-limits entailed by this task, the effects of the cleansing of the judicial system should be felt as soon as possible and that programmes for reforming the system should be expedited and executed. The upgrading of the Judicial Training School must also be effected without delay, so that it becomes a centre of academic excellence that will fulfil its task of: ensuring the continuing improvement of the professional training of judges and other judicial officials, and that of staff members of the Office of the Attorney-General of the Republic, investigating the country's judicial problems and promoting solutions to them; and fostering a stronger sense of solidarity among judges and a coherent overall vision of the functioning of the Judiciary in a democratic State.

96. Special attention must be given to the performance of the National Civil Police in accordance with the model that resulted from the Peace Agreements, as a new force, with a new doctrine, separate from the armed forces. A careful check and strict evaluation must be made of the situation of the Criminal Investigation and Anti-Narcotics Divisions and their staff. Those members of the National Civil Police whose behaviour violates human rights must be dealt with severely. The senior officials of the PNC, and particularly its Inspector-General, bear a heavy responsibility in this connection. A democratic police force must be prepared to undergo a purge at any time whenever that is necessary.

97. The Independent Expert once again strongly urges the Government of El Salvador, in accordance with the recommendations of the Commission on the Truth, to recognize the jurisdiction of the Inter-American Court of Human Rights and to join the community of Latin American democracies that have already made this commitment, which is a factor in integration of the democratic standards recognized in the hemisphere. Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela have already done so. In the present situation, when the country is preparing for the stage when it is no longer the subject of exceptional international measures for monitoring observance and guarantees of human rights, it is especially appropriate to emphasize the advisability and timeliness of

recognizing the Court, which is an ordinary institution provided for in a treaty to which El Salvador is already a party. In doing so, the Government would be acting in conformity with the policies it has proclaimed, would provide the Salvadorian people with another instrument for the defence of its fundamental rights, and would contribute to the strengthening, in a spirit of solidarity, of the system of protection of human rights in the hemisphere and the integration of democratic values in Latin America.

98. The unmet needs of the majority of Salvadorians regarding economic, social and cultural rights must be satisfied. The implementation of the Peace Agreements provides the initial bases for action, which must be extended. The pace of implementation of those Agreements must be quickened as a matter of urgency.

99. The non-governmental organizations have done remarkable work in El Salvador. Their struggles have been arduous and costly, especially in terms of lives, but also fruitful. Now that special international monitoring of the country is about to end, these organizations will have to redouble their efforts, while of course adapting to the country's new situation. They must be unremitting in the careful observation of the human rights situation, and must make the greatest possible effort to use the opportunities opened up by the peace process and to make effective use of the institutions that have been established or strengthened for the purpose of promoting and protecting human rights.

100. The peace process in El Salvador needs greater support from the international community through the National Reconstruction Plan or any other appropriate means, especially in the form of any contribution that may be made to the programme of technical cooperation and advisory services in the field of human rights prepared for El Salvador by the Centre for Human Rights. For various reasons and motives, the international community was interested in seeing an end to the armed conflict in El Salvador. That interest should now be redoubled in order to contribute to the eradication of the causes that gave rise to the conflict.

B. Advisory services

101. On 4 March 1994, at its fiftieth session, the Commission on Human Rights adopted resolution 1994/62, in which it decided to extend the mandate of the Independent Expert for one year, for the purpose of providing advisory services to El Salvador, and requested the Secretary-General to provide the Government of El Salvador with any advisory services it might request, through the Centre for Human Rights. The foregoing makes it clear, firstly, that the advisory services are the responsibility of the Centre for Human Rights and that the Independent Expert's role is merely to "provide" such services, and secondly, that the content of the services, their duration and the measures to implement them are outside the Expert's mandate.

102. As stated earlier in this report (para. 7), the Government, through the Ministry of Foreign Affairs, handed to the Independent Expert a document entitled "Proposal by the Government of El Salvador on Advisory Services in the field of Human Rights, presented to the Independent Expert for El Salvador, Mr. Pedro Nikken, in September 1994", listing the technical

assistance requirements of the various national human-rights institutions. The Centre for Human Rights, for its part, with the assistance of the Independent Expert, prepared a framework programme on technical cooperation and advisory services in the field of human rights, which the Expert submitted to the Government of El Salvador.

103. The general objective of the programme is to provide the Government of El Salvador, pursuant to Commission on Human Rights resolution 1994/62, with advisory services in the field of human rights, in order to contribute to the efforts being made by that Government to ensure the implementation, observance and promotion of those rights, and to encourage the strengthening of democracy and the rule of law in El Salvador, bearing in mind the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in June 1993. The programme also falls within the context of the Peace Agreements signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberacion Nacional (FMLN), and the political, social and economic process deriving from them; it is aimed at strengthening them and cooperating, in the relevant areas, in the full achievement of those aspects that have not yet been completely implemented.

104. The programme will be carried out over an initial period of two years (1995 and 1996). There will be an annual plan of work and a mid-term evaluation with the primary objective of reviewing advisory services priorities and needs in the course of its execution.

105. The programme has several components, which concern the following areas: strengthening of institutions, legal reforms and studies, education and training, information and documentation, support for non-governmental human rights organizations, including the media, and promotion and protection of the rights of children and women.

Component "A": Strengthening institutions

106. The fundamental objective of this component is to provide advisory services to the relevant national institutions in order to strengthen them in their task of promoting and protecting human rights, particularly as regards their capacity to redress violations of those rights.

Component "B": Legal studies and reforms

107. In order to supplement the "strengthening institutions" and "education and training" components, efforts will be made to promote studies which can be carried out in coordination with national and international academic institutions or research centres.

Component "C": Education and training

108. The objective of this component is to organize training courses on human rights for officials responsible for tasks of this nature.

Component "D": Information and documentation

109. The World Conference on Human Rights reiterated the importance of disseminating information on human rights. With that in mind, this component will seek to promote the establishment of a specialized human rights information and documentation centre. Resources will be included for preparing pamphlets, bulletins, books and other publications to promote broad dissemination of the various human rights instruments.

Component "E": Assistance to non-governmental organizations and the media

110. The San José Agreement stressed the need for cooperation between the human rights component of ONUSAL and non-governmental organizations. The Independent Expert has also called in his reports for cooperation between the Office of the National Counsel for the Defence of Human Rights and these organizations.

111. For its part, the World Conference on Human Rights, in the Vienna Declaration and Programme of Action, recognized the important role of non-governmental organizations in promoting all human rights and expressed appreciation for their contribution to the task of developing public interest in human rights issues, to the activities of teaching, training and research in this area, and to the promotion and protection of human rights and fundamental freedoms.

112 Training programmes will emphasize the use of the various mechanisms for the protection of human rights, adapted to the new situation of the country's institutions and the current context of peace and democracy.

Component "F": Programme of support for the promotion and protection of the rights of the child

113. The programme of support for the promotion and protection of the rights of the child will provide the Government of El Salvador with the necessary advisory services so that it can fulfil its obligations under the Convention on the Rights of the Child.

Component "G": Programme of support for the promotion and protection of the rights of women from a gender perspective

114. This component falls within the context of the provisions adopted at the World Conference on Human Rights, which urged that there should be full and equal enjoyment by women of all human rights and that this should be a priority for Governments and for the United Nations. In addition, in the Vienna Declaration and Programme of Action, the World Conference requested the Centre for Human Rights to take specific measures in the technical assistance programme to support Governments in protecting the human rights of women.

115. The programme is aimed at a wide range of institutions. Without excluding any of them, the Independent Expert recommends that priorities should be established, in close cooperation with the Government and taking into account the contents and conclusions of this report. In this connection,

the Office of the National Counsel for the Defence of Human Rights, the judicial system, the National Civil Police and the prison system must be given priority attention.

116. The relevant budgetary allocations must be made to enable the programme to operate without setbacks as from its preparatory phase. The Centre for Human Rights has already taken a number of steps that should be supported by the Commission and other relevant United Nations bodies. The Board of Trustees of the Voluntary Fund for Technical Cooperation in the field of Human Rights, at its second session held in Geneva from 7 to 10 November 1994, was informed of the request submitted by the Government of El Salvador, "Proposal by the Government of El Salvador on Advisory Services in the field of Human Rights, presented to the Independent Expert for El Salvador, Mr. Pedro Nikken, in September 1994". At that session, the Board of Trustees supported the Government's request and asked the Centre for Human Rights, once the Independent Expert had considered the request, to submit a project document containing a programme on technical cooperation for El Salvador at its following session to be held in Geneva from 13 to 17 February 1995, and to invite the Government of El Salvador to that session, at which the programme would be considered for financing with resources from the Voluntary Fund for Technical Cooperation in the field of Human Rights. If the Board of Trustees deems such action necessary, the programme will, in addition, be included in the list of programmes to be submitted to the donors' meeting to be held in Geneva on 17 February 1995.

117. The programme must be executed in the context of the United Nations commitments to El Salvador. Specifically, it must be linked to the proposal contained in the Secretary-General's report to the Security Council of 31 October 1994 (S/1994/1212), according to which, before the termination of ONUSAL, he would present to the Security Council his thoughts on mechanisms by which the United Nations would provide technical assistance in the fields of human rights, the Judiciary, the electoral system and reintegration, especially land transfers. He reiterated in that report that "the termination of ONUSAL should not mark the end of United Nations efforts to consolidate peace in El Salvador" (para. 30). In response to the report, the Security Council adopted resolution 961 (1994) of 23 November 1994, by which inter alia, it invited the Secretary-General, in consultation with competent specialized agencies, regional organizations and Member States, to prepare modalities for further assistance to El Salvador, within the framework of the Peace Accords, for the period after 30 April 1995. Earlier, in his report to the Security Council on ONUSAL (S/1994/1000) dated 26 August 1994, the Secretary-General had indicated to the Security Council that some of the experts presently with ONUSAL might be retained after the closing of the Mission in the framework of a broad technical assistance programme to the relevant national institutions (para. 54).

118. From that perspective, in order to determine the programme strategy, the Government and the Centre will have to conclude agreements on appropriate mechanisms for achieving optimum results. It will be necessary to take into account, in the first place, the fact that a new stage in relations between El Salvador and the Centre for Human Rights is now being designed and that its essential component is cooperation for the purpose of advisory services and assistance for the country's institutions, in a context of international cooperation free of the concept of monitoring. It should also be borne in mind that most of the programme will be executed after the mandate of ONUSAL's

human rights component has expired, which will remove some of the Centre's support, and will make it necessary to define the conditions under which advisers to the institutions covered by the programme will operate, as well as the programme's execution procedures. A senior official and a team of high-level experts will, of course, be needed, as will short-term experts.

119. In this connection, the Independent Expert, having already requested the views of the relevant authorities, specifically recommends that the advisory services programme should be administered in situ by a moderately-sized Centre delegation or mission. This would be a more useful and practical way of executing the programme since, in view of the substance of the Governments request, it would be difficult to manage the whole workload from Geneva. In addition, this method would emphasize more clearly that cooperation between the Government, on the one hand, and the Commission and the Centre, on the other, is continuing but no longer includes monitoring components.

120. The procedure thus proposed has the additional advantage of enabling the delegation or mission to El Salvador, at the request of the relevant institutions, to perform tasks in addition to those specifically covered in the programme, such as: providing assistance to the Government for the strengthening, full development and evaluation of Salvadorian institutions engaged in promoting and guaranteeing human rights; providing assistance to the Office of the National Counsel for the Defence of Human Rights; providing assistance to the Judiciary, in close cooperation with the Supreme Court of Justice and the National Council of the Judiciary, especially in matters relating to the Judicial Training School; providing assistance to the Legislative Assembly, especially as regards necessary cooperation in the analysis of bills relating to the effective realization of human rights; providing assistance to the Ministry of Education, with any technical support it may be able to obtain, in designing a human rights education programme, in accordance with the country's needs; and providing assistance to the non-governmental human rights organizations in order to enable them to continue adapting their structure and methods of work to the situation of a democratic society endowed with appropriate institutions for defending and guaranteeing human rights.

121. This approach would have to be adopted in close coordination with the mechanisms that the Secretary-General will be proposing to the Security Council in order to provide additional assistance to El Salvador after 30 April 1995 and to meet, in whatever manner may prove appropriate, United Nations commitments under the Peace Agreements. It must also be seen as part of the plan enunciated by the Secretary-General, to the effect that the termination of ONUSAL must not mark the end of United Nations efforts to consolidate peace in El Salvador. It would thus be one of the most tangible expressions of the new era beginning in El Salvador, where international solidarity will continue to be present, no longer to deal with the consequences of a serious situation regarding the country's institutions and the need to monitor the human rights situation, but to cooperate closely with the Salvadorian Government and people in the consolidation of the peace they have won and in the further improvement of the democratic institutions with which they have endowed themselves.

122. In his previous reports, the Independent Expert has stressed the inescapable link between lasting, substantial and irreversible progress in the due observance and safeguarding of human rights and implementation of the

Agreements, which must be reflected in the model of society developed during the negotiations. The institutional progress described in this report favourably reflects the same idea. The quest for peace has taken on an historic dimension; it no longer belongs to those who designed and negotiated it, but is now the common heritage of the Salvadorian people. In this new stage, the Government and the FMLN, as signatories of the Agreements, and civil society, for which they are intended, have made a lasting commitment to continue to implement them scrupulously. El Salvador has been the scene of one of the most important United Nations efforts to achieve peace, democratization, national reconciliation and untrammelled observance of human rights. It has been a shared effort by the international community and the Salvadorian Government and people. This task, in the midst of the difficulties which have been encountered - and very often overcome, has had many successes and achievements. The effort must continue, to the extend appropriate at the current time. United Nations support, as part of a programme of cooperation and technical assistance, is still necessary in El Salvador. Finally, given the distressing conditions which exist in several regions of the world, it is gratifying to be able to show that fruitful international solidarity is continuing in an effort to achieve due respect for and promotion of human dignity.

Notes

1/ A/44/971-S/21541, annex.

2/ Report of the Commission on the Truth, Recommendations, para. I.D.b.

3/ E/CN.4/1993/11, para. 170.

4/ E/CN.4/1994/11, paras. 106 and 145.

5/ According to the New York Agreement of 25 September 1991, "COPAZ is a mechanism for the monitoring of and the participation of civilian society in the process of the changes resulting from the negotiations". COPAZ is "composed of two representatives of the Government, including a member of the armed forces, two representatives of FMLN and one representative of each of the parties or coalitions represented in the Legislative Assembly". The Archbishop of San Salvador and a delegate of ONUSAL have access to its work and deliberations as observers.

6/ E/CN.4/1994/11, paras. 100 and 102.

7/ Ibid., para. 99.

8/ S/1994/1000, paras. 17-20.